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NOVEMBER 11, 2022 BY RONNIE

AB Court Of Appeals Confirms HCW Are “Independent Contractors”, Can Refuse Unvaccinated Patients

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Cited documents (39)
Treatment (0)
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Court of Queen’s Bench of Alberta

Citation: Lewis v Alberta Health Services, 2022 ABQB 479

The Alberta Court of Appeals had upheld a Queen’s Bench (now King’s Bench) decision that allows life saving treatments to be denied on the basis of vaccination status.

Interestingly, both Courts acknowledged, but skirted around the issue of whether these shots were actually safe. Instead, it came down to the case of doctors not actually being Government agents. As such, they can’t be forced to protect people’s Charter rights and freedoms.

This seems to be — at least in part — semantics, as Alberta Health Services gives direction on these kinds of issues all the time.

That said, the Lower Court stated that it was pointless, and in fact, unproductive, to issue Orders unless it was prepared to enforce them.

> [42] In my view it is not necessary for the Treating Physicians to reconcile these differences in expert opinions rather, ***they must be free to decide which expert opinions they accept in exercising their clinical judgment***, which informs the standard of care.

> Defining the Legal Relationship Between Treating Physicians and the Applicant
> [44] In Rasouli (Litigation Guardian of) v. Sunnybrook Health Sciences Centre, 2011 ONSC 1500, the following passages are found at paragraphs 88 and 89:
> .

However, as noted by Ellen I. Picard and Gerald B. Robertson in their text Legal Liability of Doctors and Hospitals in Canada:

.

In the great majority of cases, patients engage and pay their doctor (usually through medicare plans) and have the power to dismiss them. The hospital does not employ the physicians nor are they carrying out any of the hospital’s duties to the patient. They are granted the privilege of using personnel, facilities and equipment provided by the hospitals but this alone does not make them employees. They are independent contractors who are directly liable to their patients, and the hospital is not vicariously liable for their negligence.

.

Doctors owe a duty of care to their patients that begins upon the formation of the doctor-patient relationship. When this duty is breached, it is the individual doctors who are liable in negligence, not the hospital.

.

[45] In the result, the ***Treating Physicians are independent contractors*** who owe the applicant a duty of care.

Is the Relationship Between the Applicant and Her Treating Physicians Governed by the Alberta Bill of Rights?

[46] Since the advent of the Charter, Courts have looked to the Charter to determine if constitutionally protected rights are affected as the Charter can be interpreted more generously than Provincial Bills of Rights. There is no need to consider the claim under the Alberta Bill of Rights because if the Charter claims fail, her claim under the Alberta Bill of Rights will necessarily fail as well.

[52] The fact that the Treating Physicians, who are independent contractors, work in publicly funded hospitals under the rubric of Provincial and Federal healthcare legislation, ***does not mean that they are state actors subject to the Charter***.

[56] In R v Dersch [1993] SCR 768, it was held at para 20, that a doctor who illegally took a blood sample at the request of the police was acting as an agent of government subjecting the action of the doctor in taking the blood sample to Charter scrutiny.

.

[57] However, at para 18, the Court observed that the actions of emergency room

physicians in providing emergency treatment to the accused ***did not render the physicians agents of government for the purposes of the Charter***.

[61] There is no evidence that at any time the Treating Physicians became agents of government in establishing preconditions for transplantation or that any governmental body was in any way involved in this process.

[69] In order for the medical system to function properly, ***Treating Physicians who are providing clinical advice, must be free to do so and are not governed by the Charter*** but rather by the standard of care which is owed to every patient.

[77] In Sweiss v Alberta Health Services, 2009 ABQB 691 at paragraph 60, the ***perils of the court attempting to interfere with the exercise of the clinical judgment*** were described:
.
The overriding theme which pervades the reasons of the English Court of Appeal in Re J. relates to its concern over the Court ordering a medical professional to treat his or her patient in a fashion which is contrary to clinical judgment. The Court in Re J. expressed its rationale as follows at 519:
.
…The Court is not, or certainly should not be, in the habit of making orders unless it is prepared to enforce them. ***If the Court ordered a doctor to treat a child in a manner contrary to his or her clinical judgment, it would place a conscientious doctor in an impossible position. To perform the Court’s order it could require the doctor to act in a manner which he or she generally believed not to be in the patient’s best interests***; to fail to treat the child as ordered would amount to a contempt of court. Any judge would be most reluctant to punish the doctor for such a contempt, which seems to me to be a very strong indication that such an order should not be made.

Conclusion
[89] In the result, I ***conclude that the Charter has no application to clinical treatment decisions made by the Treating Physicians, and in particular has no application to the Treating Physicians establishing preconditions for XX transplantation***. The Originating Application is dismissed in its entirety.

The Courts also brought up the issue of scarcity: people can be denied organs, given their relatively low supply, if they don’t meet certain criteria. Again, it’s not *forcing* anyone to get the shot, as long as they are fine with not getting the organs they need.

It’s difficult to view this as anything other than coercion.

> IV. Conclusion
> [74] This is not the first time medical judgments about allocation of scarce resources have been made in the face of competing needs. While such decisions are doubtless exceedingly difficult, they nevertheless must be made. In this case, the ***Charter does not apply to the respondents’ exercise of clinical judgments in formulating pre-conditions to [organ] transplant, including requiring vaccination*** against COVID-19 in the wake of the pandemic.

> [75] In conclusion, we are not persuaded this Court can, or ought to, interfere with generalized medical judgments or individualized clinical assessments involving Ms Lewis’ standard of care. In the circumstances of this appeal, while ***Ms. Lewis has the right to refuse to be vaccinated against COVID-19, the Charter cannot remediate the consequences of her choice.***

> [76] The appeal is dismissed.

Think about the ramifications of these rulings: a person cannot be *forced* to get an experimental vaccine. However, doctors have the right to withhold *life saving treatments* if they refuse. In other words, it’s still “take the vaccine or die”.

A cynic may wonder if doctors are going along with this since they were forced to get the shots in order to keep practicing. Perhaps they wish for everyone to suffer, instead of admitting they made a mistake.

This may (or may not) be the end of the road. At this point, the only available option is to file an Application for Leave to be heard at the Supreme Court. And although they reject cases deemed not to be “in the national interest”, it seems likely that this one would be heard at least.

(1) https://www.canlii.org/en/ab/abqb/doc/2022/2022abqb479/2022abqb479.html
(2) https://www.canlii.org/en/ab/abqb/doc/2022/2022abqb479/2022abqb479.pdf
(3) https://www.canlii.org/en/ab/abca/doc/2022/2022abca359/2022abca359.html
(4) https://www.canlii.org/en/ab/abca/doc/2022/2022abca359/2022abca359.pdf
(5) https://edmontonjournal.com/news/crime/court-upholds-doctors-right-to-require-covid-vaccination-for-organ-transplant-patient-saying-alternative-is-medical-chaos

CANADA, CANADIAN DECISIONS, GLOBALISM, HUMAN RIGHTS, UN/WHO, VACCINES

3 Replies to “AB Court Of Appeals Confirms HCW Are “Independent Contractors”, Can Refuse Unvaccinated Patients”

blossom5551

NOVEMBER 12, 2022 AT 12:31 AM

Absolute lunacy and conspiring to cause harm and even death. With all that we now know, this is an absolute crime, travesty and perversion of law. I believe this is a kangaroo court with a very “thin” illusion that it hands out lawful justice.

gracejoubarne461654805

NOVEMBER 12, 2022 AT 9:28 AM

To complete the circle, you have the for-profit Health Services and every regulatory college run by lawyers who are connected to the lawyer-Judges who hear these cases.

Listen to oncologist Dr. William Makis expose the massive corruption that is the Canadian healthcare system https://www.bitchute.com/video/8hiAICfBdk2m/ At the time of this interview, 80 young healthy doctors had suddenly dropped dead. A month later the tally was 90.

Many people have lived their entire lives never going near a hospital or conventional (Rockefeller) doctor and never taking pharma products…most well over 85 years old.

We need to listen to those who survived just fine by recognizing that conventional healthcare is actually illness-creation and care and they are the ‘prey’.

Lucy

NOVEMBER 12, 2022 AT 5:59 PM

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